

**MARKET CONDUCT EXAMINATION REPORT**  
**AS OF DECEMBER 31, 2002**

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**Financial Indemnity Company  
21650 Oxnard Street, Suite 1800  
Woodland Hills, California 91367**

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**NAIC Group Code 0215  
NAIC Company Code 19852**

**EXAMINATION PERFORMED BY  
INDEPENDENT CONTRACTORS  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
STATE OF COLORADO**

**Financial Indemnity Company  
21650 Oxnard Street  
Woodland Hills, California 91367**

**MARKET CONDUCT  
EXAMINATION REPORT  
as of  
December 31, 2002**

**Examination Performed by  
Lucille E. Whittle, CIE  
K. C. Lang, AIE**

**Independent Market Conduct Examiners**

September 4, 2003

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner:

In accordance with Sections 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting and claims practices of the private passenger automobile insurance business of Financial Indemnity Company, hereinafter referred to as the "Company", has been conducted. The Company's underwriting records were examined at its regional office located at 21650 Oxnard Street, Suite 1800, Woodland Hills, California 91367. The Company's claims records were examined at its claims office located at 4263 Commercial Street, S.E., Suite 400, Salem, Oregon 97302. The examination covered the period from January 1, 2002 to December 31, 2002.

The following market conduct examiners respectfully submit the results of the examination.

Lucille E. Whittle, CIE

K. C. Lang, AIE

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
FINANCIAL INDEMNITY COMPANY**

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### **COMPANY PROFILE**

The Company was incorporated in California on December 19, 1945. In 1975 all of the Company's outstanding common stock was purchased by Trinity Universal Insurance Company. Trinity Universal Insurance Company, since 1990, has been a wholly owned subsidiary of Unitrin Inc., a financial services company.

The Company is a property and casualty insurance company with principal products of personal and commercial nonstandard automobile insurance. These products are marketed in Colorado by independent agents. The Company currently writes nonstandard private passenger automobile policies in Arizona, California, Colorado, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Utah and Washington.

The Company received a Certificate of Authority in Colorado on March 1, 1976. It wrote a small volume of nonstandard private passenger automobile business in Colorado during the 1970's but discontinued this program in the late 1970's. The Company resumed writing nonstandard private passenger automobile business in Colorado in November of 1993 and began writing nonstandard commercial automobile business in Colorado in September of 1995.

Based on figures supplied by the National Association of Insurance Commissioners (NAIC), the Company reported written premium in Colorado for the calendar year 2002 of \$20,982,000, which represents a .73% market share for private passenger automobile.

### **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado insurance law Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his/her resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to private passenger automobile insurance law. Examination information contained in this report should serve only those purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners, the Colorado Division of Insurance and the Insurance Regulatory Examiners Society. In reviewing material for this report, the examiners relied primarily on records and material maintained by the Company. The examination covered one calendar year of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of underwriting and claim files that were systematically selected by using Audit Command Language (ACL) software and computer data files provided by the Company. Sample sizes were chosen based on from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and these comment forms were given to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings for each sample. This report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report as references to any practices, procedures, or files manifesting no errors were omitted.

An error tolerance level of plus or minus \$10.00 was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

This report contains information regarding exceptions to the Colorado insurance law. The examination included review of the following four (4) Company operations:

1. Company Operations/Management
2. Underwriting Practices
3. Rate Application
4. Claims Settlement Practices

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse nor discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations not referencing specific insurance laws and/or regulations may be presented to encourage improvement of company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.

**EXAMINERS' METHODOLOGY**

The examiners reviewed the Company's Private Passenger Automobile underwriting and claims practices to determine compliance with Colorado insurance law as outlined in Exhibit 1.

**Exhibit 1**

| <b>Law</b>          | <b>Subject</b>                                                                                                    |
|---------------------|-------------------------------------------------------------------------------------------------------------------|
| Section 10-4-602.   | Basis for Cancellation.                                                                                           |
| Section 10-4-603.   | Notice.                                                                                                           |
| Section 10-4-604.   | Nonrenewal.                                                                                                       |
| Section 10-4-605.   | Proof of notice.                                                                                                  |
| Section 10-4-609.   | Insurance protection against uninsured motorists-applicability.                                                   |
| Section 10-4-610.   | Property damage protection against uninsured motorists.                                                           |
| Section 10-4-611.   | Elimination of discounts – damage by uninsured motorist.                                                          |
| Section 10-4-613.   | Glass repair and replacement.                                                                                     |
| Section 10-4-614.   | Inflatable restraint systems - replacement - verification of claims.                                              |
| Section 10-4-706.   | Required coverages - complying policies - PIP examination program.                                                |
| Section 10-4-706.5. | Operator's policy of insurance.                                                                                   |
| Section 10-4-707.5. | Ridesharing arrangements - benefits payable - required coverage.                                                  |
| Section 10-4-708.   | Prompt payment of direct benefits.                                                                                |
| Section 10-4-709.   | Coordination of benefits.                                                                                         |
| Section 10-4-710.   | Required coverages are minimum.                                                                                   |
| Section 10-4-711.   | Required provision for intrastate and interstate operation.                                                       |
| Section 10-4-713.   | No tort recovery for direct benefits.                                                                             |
| Section 10-4-714.   | Limitation on tort actions.                                                                                       |
| Section 10-4-715.   | No limitation on tort action against non-complying tort-feasors.                                                  |
| Section 10-4-717.   | Intercompany arbitration.                                                                                         |
| Section 10-4-718.   | Quarterly premium payments.                                                                                       |
| Section 10-4-719.   | Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7. |
| Section 10-4-719.5. | Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.                |
| Section 10-4-719.7. | Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.                                 |



|                    |                                                                                                                                   |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Section 10-4-720.  | Cancellation - renewal - reclassification.                                                                                        |
| Section 10-4-721.  | Exclusion of named driver.                                                                                                        |
| Section 10-4-724.  | Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration. |
| Section 10-4-725.  | Certification of policy and notice forms.                                                                                         |
| Section 10-3-1103. | Unfair methods of competition and unfair or deceptive acts or practices prohibited.                                               |
| Section 10-3-1104. | Unfair methods of competition and unfair or deceptive acts or practices.                                                          |
| Regulation 1-1-7.  | Market Conduct Record Retention.                                                                                                  |
| Regulation 5-1-2.  | Application and Binder Forms.                                                                                                     |
| Regulation 5-1-10. | Rate and Rule Filing Regulation                                                                                                   |
| Regulation 5-1-16. | Limitations on the Use of Credit Information or Insurance Score                                                                   |
| Regulation 5-2-1.  | Relative Value Schedule for No Fault.                                                                                             |
| Regulation 5-2-2.  | Renewal of Automobile Insurance Policies – Excluded Named Drivers.                                                                |
| Regulation 5-2-3.  | Auto Accident Reparations Act (No Fault) Rules and Regulations                                                                    |
| Regulation 5-2-6.  | Automobile No Fault Cost Containment Options.                                                                                     |
| Regulation 5-2-8.  | Timely Payment of Personal Protection Benefits.                                                                                   |
| Regulation 5-2-9.  | Personal Injury Protection Examination Program.                                                                                   |
| Regulation 6-1-1.  | Limiting coverage.                                                                                                                |

### **Company Operations/Management**

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

### **Contract Forms and Endorsements**

The following Private Passenger Automobile forms and endorsements, certified by the Company with the Colorado Division of Insurance for July 1, 2001 and July 1, 2002, were reviewed for compliance with Colorado insurance law:

| <b>Title</b>                              | <b>Form</b> |
|-------------------------------------------|-------------|
| Renewal Declaration                       | DP-44L      |
| Notice of Cancellation                    | U-7         |
| Notice of Proposed Increase in Premium    | U-12        |
| Notice of Cancellation/Nonrenewal         | U-13        |
| Summary Disclosure Form                   | U-44        |
| Loss Payable Endorsement                  | U-49A       |
| Acknowledgement of Receipt of Information | U-70        |
| Supplemental Application                  | U-314       |
| Named Driver Exclusion                    | U-607       |
| Lessor's Endorsement                      | U-609       |
| Lienholder Deductible Endorsement         | U-618       |

|                                   |       |
|-----------------------------------|-------|
| Family Car Policy                 | U-624 |
| Coverage for Additional Equipment | U-635 |
| Recreational Vehicle Endorsement  | U-640 |
| Designated Insured Endorsement    | U-642 |
| Named Non-Owner Endorsement       | U-645 |

### **New Business /Cancellations/Nonrenewals/Surcharges/Rejections/Renewals**

For the period under examination, the examiners systematically selected the following underwriting samples to determine compliance with underwriting practices:

| <b>Review Lists</b>                         | <b>Population</b> | <b>Sample Size</b> | <b>Percentage to Population</b> |
|---------------------------------------------|-------------------|--------------------|---------------------------------|
| New Business                                | 11,687            | 100                | 9%                              |
| Nonrenewals                                 | 1910              | 50                 | 3%                              |
| Canceled for Cause after 1 <sup>st</sup> 59 | 12                | 12                 | 100%                            |
| Cancel non-pay                              | 17,411            | 100                | 6%                              |
| Surcharges                                  | 1840              | 50                 | 3%                              |
| Renewals                                    | 11,151            | 100                | 9%                              |

### **Rating**

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of new business and renewal policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, classification plans, discounts, rating plans and final premium calculations.

### **Claims**

For the period under examination, the examiners systematically selected the following samples to determine compliance of claims handling practices and claims manual rules:

| <b>Review Lists</b>      | <b>Population</b> | <b>Sample Size</b> | <b>Percentage to Population</b> |
|--------------------------|-------------------|--------------------|---------------------------------|
| First Party              | 1,237             | 50                 | 4%                              |
| Third Party              | 1,504             | 50                 | 3%                              |
| PIP paid claims          | 821               | 50                 | 6%                              |
| Subrogation              | 107               | 50                 | 47%                             |
| Total loss               | 532               | 50                 | 9%                              |
| Denied for cause         | 860               | 50                 | 6%                              |
| Uninsured Motorist BI/PD | 23                | 23                 | 100%                            |

## **EXAMINATION REPORT SUMMARY**

The examination resulted in a total of eight (8) issues arising from the Company's apparent failure to comply with Colorado insurance law that governs all property and casualty insurers operating in the State of Colorado. These issues involved the following Company operations:

### **Company Operations/Management**

In the area of Company operations/management, one (1) compliance issue is addressed in this report. This issue arises from Colorado statutory and regulatory requirements that must be followed when writing private passenger automobile policies in Colorado. In regard to this one (1) practice, it is recommended that the Company review its record retention procedures and make the necessary changes to assure future compliance with applicable Colorado insurance law.

The compliance issue addressed in this phase is as follows:

- Failure of the Company, in some cases, to maintain records required when writing private passenger automobile policies in the State of Colorado.

### **Underwriting Practices**

In the area of private passenger automobile underwriting practices, five (5) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements that must be followed when writing private passenger automobile policies in Colorado. In regard to these five (5) underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable Colorado insurance law.

The five (5) compliance issues addressed in this phase are as follows:

- Failure, in some cases, of the Company's published underwriting guidelines to comply with Colorado insurance law.
- Certification and use of non-complying forms.
- Failure of the Company, in some cases, to provide at least thirty (30) days notice of cancellation or nonrenewal.
- Failure of the Company, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and the opportunity to exclude the person(s) from coverage.
- Failure of the Company, in some cases, to use correct rating elements when rating private passenger policies written in the State of Colorado.

**Rate Application**

No compliance issues were found in the area of private passenger automobile rate application.

**Claims Settlement Practices**

In the area of private passenger automobile claims settlement practices, two (2) compliance issues are addressed. These issues arise from Colorado private passenger automobile statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claim checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claim payments. In regard to the two (2) compliance issues in this area, it is recommended that the Company review its private passenger automobile claims handling procedures and make the necessary changes to assure future compliance with applicable Colorado insurance law.

The two (2) compliance issues addressed in this phase are as follows:

- Failure of the Company, in some cases, to make PIP benefit payments within the time period required by Colorado insurance law.
- Failure of the Company, in some cases, to notify providers and claimants in writing of the reason why a provider's claim had not been paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Examinations are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

**MARKET CONDUCT EXAMINATION REPORT**

**FACTUAL FINDINGS**

**FINANCIAL INDEMNITY COMPANY**

**OPERATIONS/MANAGEMENT**  
**FINDINGS**

**Issue A: Failure of the Company, in some cases, to maintain records required when writing private passenger automobile policies in the State of Colorado.**

Section 10-4-413, C.R.S., Records required to be maintained, states, in part:

(1) Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonable adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it...

Colorado Regulation 1-1-7, Market Conduct Record Retention, states in part:

Section 4. Records Required For Market Conduct Purposes

A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE NEW BUSINESS POLICIES WRITTEN  
FROM JANUARY 1, 2002 TO DECEMBER 31, 2002**

| <b>Population</b> | <b>Sample Size</b> | <b>Number of<br/>Exceptions</b> | <b>Percentage to<br/>Sample</b> |
|-------------------|--------------------|---------------------------------|---------------------------------|
| 11,687            | 100                | 12                              | 12%                             |

An examination of one hundred (100) files, representing 9% of all private passenger automobile new business policies written by the Company in Colorado during the examination period, showed twelve (12) exceptions (or 12% of the sample), and seventeen (17) instances, in which the Company failed to maintain documents required when writing private passenger automobile policies in the State of Colorado. Twelve (12) files did not contain the required PIP form showing that the insured had chosen an option other than basic PIP. Five (5) files did not contain signed uninsured motorists rejection forms even though the insured was not charged for uninsured motorist coverage.

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**Recommendation #1**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-413, C.R.S. and Colorado Regulation 1-1-7. If the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance that ensure that the Company will retain all documents required by Colorado insurance law when writing private passenger automobile policies in the State of Colorado.



**FINDINGS**  
**UNDERWRITING PRACTICES**

**Issue B. Failure, in some cases, of the Company's published underwriting guidelines to comply with the insurance laws of the State of Colorado.**

Section 10-4-710, C.R.S., Required coverages minimum, states, in part:

(3) All insurers shall offer collision coverage for damage to insured motor vehicles subject to deductibles of one hundred dollars and two hundred fifty dollars. Insurers may offer such other reasonable deductibles as they deem appropriate. Collision coverage shall provide insurance without regard to fault against accidental property damage to the insured motor vehicle with another motor vehicle or motor vehicle caused by physical contact of the insured with another object or by upset of the insured motor, if the accident occurs within the United States, its territories or possessions, Canada, or Mexico.

The Company's Underwriting Guidelines states in part:

**UNACCEPTABLE RISKS:**

Page 7 (8/01) and Page 6 (7/02 and 11/02)

...5. Physical Damage coverage for:

- a. Vehicles with a cost new over \$100,000 or with an ISO symbol of 26 or greater,
- b. Salvaged vehicles
- c. Vehicles 15 years old and older, including comprehensive only.

A company writing liability coverage on private passenger automobiles in Colorado cannot refuse to write physical damage coverage for that vehicle.

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**Recommendation #2**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-710, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance that ensure that the Company will comply with the Colorado insurance laws.

**Issue C: Certification and use of non-complying forms.**

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(u) Certifying pursuant to section 10-4-725 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

Section 10-4-706, C.R.S., Required coverages – complying policies – PIP examination program, states in part:

(1)(d)(I)...In addition payment shall be provided for expenses not exceeding twenty-five dollars per day which are reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period commencing the day after the date of the accident and not exceeding fifty-two additional weeks.

Colorado Regulation 5-2-3, Auto Accident Reparations Act (No-Fault) Rules and Regulations, promulgated under the authority of Sections 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S., states in part:

Section 3 Rules

E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages...

2. Notice of proposed actions...

(b) Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your Right to Protest", the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the

company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse...

4. Basis for cancellation of an automobile insurance policy.

a. Except in the case of a renewal policy, an insurer may cancel a policy which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer. Any such notice of cancellation may not be based on any of the prohibited reasons listed in Section 10-4-719, et. seq., C.R.S...

The Company's Form U-12 (11/93), Notice of Increase In Premium and Form U-13 (09/94), Notice of Nonrenewal or Notice of Cancellation, do not contain the above statement of payment instructions.

The Company's Form U-44 (11/93), Family Car Policy Summary Disclosure Form, states in part:

Cancellation and Nonrenewal

You may cancel the policy at anytime by returning it to us or giving us notice of the future date cancellation is to take effect. When the policy is in effect for less than 60 days, we may cancel for any reason...

This form does not provide that a policy may not be canceled for any reason prohibited by Section 10-4-719, C.R.S.

On the Company's Annual Report for Automobile Private Passenger Insurance Forms submitted June 27, 2002, to be effective July 1, 2002, the Company certified Form U-314 (03/99), Colorado Supplemental Application. This form contained the following:

"To be read and initialed when choosing Option C – No Wage Loss PIP Option:

I acknowledge that neither I nor my resident spouse have received any earned income from wages during the 31 days before applying for coverage and do not anticipate any earned income from wages during the next 180 days. It has been explained and I understand that no Wage Loss Benefits are provided under the Personal Injury Protection coverage if this option is chosen. If I receive any earned income from wages after applying for this reduced benefit option, it is my responsibility to inform Financial Indemnity Company or my agent to change coverage to include Wage Loss Benefits."

“To be read and initialed when choosing Option D – Limited Benefits PIP Option:

I understand that the combined gross income from all sources of myself and my resident spouse cannot exceed \$20,000. It has been explained to be that by accepting this option, Personal Injury Benefits will be limited to \$25,000 per person for any one accident for payment of all reasonable and necessary expenses for medical, optometric, podiatric, hospital, etc., services performed within five years after the accident. I also understand that rehabilitative occupational training and essential service expenses are not covered. It has been further explained to me that if my/our combined gross income exceeds \$20,000 during the policy period, it is my/our responsibility to notify Financial Indemnity Company or my agent to change the coverage to increase the maximum benefit per person.”

Effective July 1, 2002, the two (2) Personal Injury Protection options shown above were no longer available under Colorado law. An option to reject wages, without earnings restrictions, was available after that date. On July 19, 2002, the Company filed a corrected Colorado Supplemental Application to be used on or after August 25, 2002.

The Company’s Form U-624 (2/00), Colorado Family Car Policy, states in part:

Part II – Personal Injury Protection Coverage

Coverage B1 – Personal Injury Protection Coverage

...Additional Definitions Used In This Part Only

...”Essential service expenses” means expenses reasonably incurred during the eligible injured person’s lifetime for usual and necessary substitute services he or she would normally perform without pay if the bodily injury had not occurred...

Limits of Liability...

The maximum payable for essential service expenses shall not exceed \$25 per day and shall be payable beginning the day after the date of the accident for a period not exceeding 52 weeks.

The Company’s policy contains ambiguous wording as the definition should clearly show that Colorado law restricts payment under this coverage to the day after the date of the accident and not to exceed fifty-two (52) additional weeks.

**Recommendation #3**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 10-4-706, C.R.S. and Colorado Regulation 5-2-3. If the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance that ensure that the Company will certify and use forms and endorsements in compliance with Colorado insurance laws.

**Issue D: Failure of the Company, in some cases, to provide at least thirty (30) days notice of cancellation or nonrenewal.**

Section 10-4-603, C.R.S., Notice, states, in part:

(1) No notice of cancellation of a policy to which section 10-4-602 applies shall be valid unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation; ...

Section 10-4-604, C.R.S., Nonrenewal, states, in part:

(1) No insurer shall refuse to renew a policy unless such insurer or its agent mails or delivers to the named insured, at the address shown on the policy, at least thirty days' advance notice of its intention not to renew...

The following charts illustrate the significance of error versus the populations and samples examined:

**PRIVATE PASSENGER AUTOMOBILE POLICIES CANCELED AFTER THE FIRST 59 DAYS FROM JANUARY 1, 2002 TO DECEMBER 31, 2002**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 12         | 12          | 4                    | 33%                  |

An examination of twelve (12) policies canceled after the first fifty-nine (59) days, representing 100% of all Colorado private passenger automobile policies canceled after the first fifty-nine (59) days by the Company during the examination period, showed four (4) exceptions (or 33% of the sample), in which the Company failed to provide at least thirty (30) days notice of cancellation to the insured.

**PRIVATE PASSENGER AUTOMOBILE POLICIES NONRENEWED BY THE COMPANY FROM JANUARY 1, 2002 TO DECEMBER 31, 2002**

| Population | Sample Size | Number of Exceptions | Percentage to Sample |
|------------|-------------|----------------------|----------------------|
| 1910       | 50          | 3                    | 6%                   |

An examination of fifty (50) nonrenewed policies, representing 3% of all Colorado private passenger automobile policies nonrenewed by the Company during the examination period, showed three (3) exceptions (or 6% of the sample), in which the Company failed to provide at least thirty (30) days notice of nonrenewal to the insured.

**Recommendation #4**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-603 and 10-4-604, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance that ensure that the Company will be in compliance with Colorado insurance law.



**Issue E: Failure of the Company, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and the opportunity to exclude the person(s) from coverage.**

Section 10-4-721, C.R.S., Exclusion of named driver, states, in part:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE SURCHARGED BY THE COMPANY  
FROM JANUARY 1, 2002 TO DECEMBER 31, 2002**

| <b>Population</b> | <b>Sample Size</b> | <b>Number of Exceptions</b> | <b>Percentage to Sample</b> |
|-------------------|--------------------|-----------------------------|-----------------------------|
| 1840              | 50                 | 15                          | 30%                         |

An examination of fifty (50) files, representing 3% of all private passenger automobile policies surcharged by the Company in Colorado during the examination period, showed fifteen (15) exceptions (or 30% of the sample), in which the Company failed to send an insured a notice of increase in premium due to the driving record of one or more persons insured, along with the opportunity to exclude the person(s) from coverage.

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**Recommendation #5**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-721, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance that ensure that the Company will provide Colorado insureds with a notice as required by Colorado insurance law.

**Issue F: Failure of the Company, in some cases, to use correct rating elements when rating private passenger automobile policies written in the State of Colorado.**

Section 10-4-401, C.R.S., Purpose – applicability, states, in part:

(1) The purpose of this part 4 is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions, and to improve the availability and reliability of insurance. For such purposes, the division of insurance of the department of regulatory agencies and the head of the division, the commissioner of insurance, shall be charged with execution of this part 4...

Additionally, Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states, in part:

Section 5. Rules...

C. Rule Filing General Requirements...

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE NEW BUSINESS POLICIES WRITTEN  
FROM JANUARY 1, 2002 TO DECEMBER 31, 2002**

| <b>Population</b> | <b>Sample Size</b> | <b>Number of<br/>Exceptions</b> | <b>Percentage to<br/>Sample</b> |
|-------------------|--------------------|---------------------------------|---------------------------------|
| 11,687            | 100                | 30                              | 30%                             |

An examination of one hundred (100) new business policies, representing 9% of all private passenger automobile new business policies written by the Company in Colorado during the examination period, showed thirty (30) exceptions (or 30% of the sample), and thirty-five (35) instances, in which the Company used incorrect rating elements when rating the policies. Eighteen (18) insureds were rated in the BASIC program when they qualified for the lower rated PLUS program. Six (6) policies contained incorrect or unsubstantiated point charges. Three (3) insureds were given PIP coverages different from the coverages they requested. Three (3) insureds were not provided with uninsured motorist coverage even though they had not rejected the coverage. Two (2) insureds were charged surcharges for unverifiable driving records when the Company had evidence of prior driver's licenses. One (1) insured was given a Financial Responsibility Discount when they did not qualify for the discount. One (1) insured was charged for uninsured motorist coverage when they have rejected the coverage in writing. One (1) insured was given uninsured motorist property damage coverage even though they had not requested this coverage.

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**Recommendation #6**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-401 and 10-3-1104, C.R.S. and Colorado Regulation 5-1-10. If the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance that ensure that the Company will use correct rating elements to comply with Colorado insurance law.

**CLAIMS SETTLEMENT PRACTICES**  
**FINDINGS**

**Issue G: Failure of the Company, in some cases, to make PIP benefit payments within the time period required by the Colorado insurance law.**

Section 10-4-708, C.R.S., Prompt payment of direct benefits, states, in part:

(1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

Colorado Regulation 5-2-8, Timely Payment of Personal Injury Protection Benefits, under the authority of Section 10-1-109, C.R.S., states, in part:

III. A. Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in 10-4-706 are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred;

B. In the usual case, for purposes of triggering the thirty-day time period in section 10-4-708(1), C.R.S., the following documents are sufficient to establish reasonable proof of the fact and amount of the expenses incurred:

1. A properly executed application for benefits from the PIP claimant;
2. A notice to an insurer which meets the requirements of Section 10-4-708.5, C.R.S.; and
3. A billing statement for a procedure or treatment, which is subject to the obligations of Section 10-4-708.6, C.R.S.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION  
CLAIMS PAID FROM JANUARY 1, 2002 THROUGH DECEMBER 31, 2002**

| <b>Population</b> | <b>Sample Size</b> | <b>Number of<br/>Exceptions</b> | <b>Percentage to Sample</b> |
|-------------------|--------------------|---------------------------------|-----------------------------|
| 821               | 50                 | 21                              | 42%                         |

An examination of fifty (50) personal injury protection claim files, representing 6% of all Colorado personal injury protection claim files on which payments were made by the Company during the examination period, showed twenty-one (21) exceptions (or 42% of the sample), where the Company failed to pay PIP claims within the time period required by the insurance laws of the State of Colorado.

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**Recommendation #7**

Within thirty (30) days, the Company should provide written documentation demonstrating why it should not be considered in violation of Section 10-4-708, C.R.S. and Colorado Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide written evidence demonstrating that the Company has implemented procedures to make timely payment of PIP benefits in order to ensure compliance with the Colorado insurance law.

**Issue H: Failure of the Company, in some cases, to notify providers and claimants in writing of the reason why a provider's claim had not been paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits.**

Section 10-4-708, C.R.S., Prompt payment of direct benefits, states, in part:

(1.3) The general assembly directs the commissioner of insurance to promulgate a rule, pursuant to the "State Administrative Procedures Act", article 4 of title 24, C.R.S., to establish guidelines for the timely payment of personal injury protection benefits including the penalties for the failure to timely pay such benefits or to otherwise comply with the rule. . . .Such guidelines shall also provide for the commencement of investigations by insurers after receipt of the items listed if payment of the expenses is not made within thirty days of the items' receipt, together with written notice to the insured and provider of the reasons the claim has not been paid.

Colorado Regulation 5-2-8, Timely Payment of Personal Injury Protection Benefits, under the authority of Section 10-1-109, C.R.S., states, in part:

3.A. . . .When an investigation is incomplete or is otherwise continued, the insurer shall, within 30 days after the documents are received as described in C. below and every 30 days thereafter, send to the claimant or the claimant's representative, and the health care provider, if applicable, a letter setting forth the reasons additional time is needed for investigation.

Where additional information is required to complete an investigation, the insurer shall request such information, specifically listing the items needed to complete the investigation. A copy of such request shall be delivered to the claimant, the claimant's representative, the health care provider or other person or entity most likely in possession of the required information.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION  
CLAIMS PAID FROM JANUARY 1, 2002 TO DECEMBER 31, 2002**

| <b>Population</b> | <b>Sample Size</b> | <b>Number of Exceptions</b> | <b>Percentage to Sample</b> |
|-------------------|--------------------|-----------------------------|-----------------------------|
| 821               | 50                 | 21                          | 42%                         |

An examination of fifty (50) personal injury protection claim files, representing 6% of all personal injury protection claim files on which payments were made by the Company during the examination period, showed twenty one (21) exceptions (or 42.0% of the sample), wherein the Company did not notify the provider and claimant of the reason(s) why the provider's claim had not been paid within thirty (30) days.

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**Recommendation #8**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-708, C.R.S. and Colorado Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Colorado Division of Insurance demonstrating that it has instituted a system in which providers and claimants will be notified in writing of the reason(s) why the provider's claim has not been paid within thirty (30) days to ensure compliance with Colorado insurance law.



**SUMMARY OF RECOMMENDATIONS LOCATOR**  
**EXAMINATION REPORT ON**

**FINANCIAL INDEMNITY COMPANY**

| <b>ISSUE</b>                                                                                                                                                                                                                                              | <b>RECOMMENDATION</b> | <b>PAGE #</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------|
| Issue A: Failure of the Company, in some cases, to maintain records required when writing private passenger automobile policies in the State of Colorado.                                                                                                 | 1                     | 16            |
| Issue B: Failure, in some cases, of the Company's published underwriting guidelines to comply with Colorado insurance law.                                                                                                                                | 2                     | 18            |
| Issue C: Certification and use of non-complying forms.                                                                                                                                                                                                    | 3                     | 22            |
| Issue D: Failure of the Company, in some cases, to provide at least thirty (30) days notice of cancellation or nonrenewal.                                                                                                                                | 4                     | 24            |
| Issue E: Failure of the Company, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and the opportunity to exclude the person(s) from coverage.                               | 5                     | 25            |
| Issue F: Failure of the Company, in some cases, to use correct rating elements when rating private passenger automobile policies written in the State of Colorado.                                                                                        | 6                     | 27            |
| Issue G: Failure of the Company, in some cases, to make PIP benefit payments within the time period required by Colorado insurance law.                                                                                                                   | 7                     | 30            |
| Issue H: Failure of the Company, in some cases, to notify providers and claimants in writing of the reason why a provider's claim had not been paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits. | 8                     | 32            |

Independent Market Conduct Examiners

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participated in this examination and in the preparation of the report.